



without restrictions. Dr. Jansson testified that claimant was not immune from problems, and claimant could still have knee pain.<sup>1</sup>

Respondent argues claimant should be denied additional medical treatment as the Application For Post-Award Medical benefits was filed one day after the July 18, 2005 Award was issued. What respondent ignores is that claimant's request for treatment came four months after the regular hearing and nine months after claimant's last medical care with Dr. Jansson.

Respondent disputes whether claimant has experienced a change in condition since the regular hearing. While K.S.A. 44-528, the review and modification statute, considers whether a claimant has suffered a change in condition, this matter is a post-award medical request under K.S.A. 44-510k. That statute does not require proof of a change in claimant's condition. It requires a need for medical care to cure and relieve the effects of the injury.

Respondent further argues that claimant has provided no evidence of a need for medical treatment. Claimant's attorney even acknowledged that he was not sure of the problem. Claimant testified that he has had ongoing swelling since after the surgery and has occasional pain with activity. Dr. Jansson agreed that claimant would have pain with activity. In fact, jumping and landing activities were specifically discussed as possible aggravating factors at Dr. Jansson's June 5, 2005 deposition.<sup>2</sup> While respondent argues that claimant's attorney has failed to provide any medical evidence of a need for ongoing treatment, who better to consider whether claimant needs added medical treatment from this injury than Dr. Jansson, claimant's previously authorized treating physician?

Finally, respondent contends that claimant has suffered an intervening injury resulting from his weekly participation in volleyball. Claimant testified to ongoing swelling since his knee surgery, but acknowledged that his weekly volleyball activities caused him ongoing problems. Additionally, Dr. Jansson testified that jumping and landing activities would aggravate claimant's knee. Whether these activities are merely ongoing symptoms of the original injury or rise to the level of an intervening injury is problematic, but claimant has met his burden that a followup examination with Dr. Jansson is warranted. The Administrative Law Judge's Post Award Medical order referring claimant to Dr. Jansson for followup treatment is affirmed.

Respondent next objects to the Administrative Law Judge's October 13, 2006 Order granting claimant's attorney post-award fees for 7.3 hours of work at \$150.00 per hour.

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<sup>1</sup> Jansson Depo. (Sept. 12, 2005) at 7.

<sup>2</sup> Jansson Depo. (June 5, 2005) at 8.

No objection is raised regarding the number of hours claimed. The only objection is to the hourly rate awarded. K.S.A. 44-536 allows post-award attorney fees to be awarded by the Director on the "basis of the reasonable and customary charges in the locality for such services. . . ."<sup>3</sup> While respondent claims the hourly rate is excessive, no evidence is provided regarding what would be reasonable or customary in Wichita, or even in Kansas. The Administrative Law Judge found that claimant's attorney, with his 38 years of legal experience, would justify an hourly fee of \$150.00. Absent contrary evidence, the Board agrees.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Post Award Medical order dated September 26, 2006, and the Order dated October 13, 2006, of Administrative Law Judge Nelsonna Potts Barnes should be, and are hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of January, 2007.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Stephen J. Jones, Attorney for Claimant  
Robert J. Wonnell, Attorney for Respondent and its Insurance Carrier  
Nelsonna Potts Barnes, Administrative Law Judge

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<sup>3</sup> K.S.A. 44-536(g).